IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13605 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

AHMEDABAD MUNICIPAL CORPORATION

Versus

HARIBHAI BECHHARBHAI, C/O.AKHIL GUJ MAZDOOR SANGH

Appearance:

MR DC RAVAL for Petitioner

MR DG CHAUHAN for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 19/09/97

ORAL JUDGMENT

#. Heard learned counsel for the parties.

#. The petitioner, Ahmedabad Municipal Corporation, Ahmedabad, filed this Special Civil Application under Article 226 and 227 of the Constitution and challenged the award of the 4th Labour Court at Ahmedabad in Reference (L.C.A.) No.1374 of 1982, dated 25th July 1994,

under which the Labour Court has ordered for payment of full backwages to the workman concerned from 5.10.78 till the date of his superannuation together with consequential benefits.

#. The respondent-workman was in employment of the petitioner-Corporation as a class IV and has been dismissed from services on 5.10.78 on the misconduct that he was doing work elsewhere also. The charge against the respondent-workman was that he was working elsewhere in addition to the services of the Corporation and the matter was brought to the notice of Vigilance Department of the Corporation which made enquiry in that regard and submitted the report. It was found that the respondent-workman was doing work in the Ahmedabad Cotton Manufacturing Co. Ltd. in addition to the services of the Corporation. The respondent was therefore dismissed from the services of the Corporation by an order dated 5.10.78. The dispute has been raised and the same has been referred to the Labour Court. Under the impugned award, dismissal of respondent-workman was found to be not justified. It appears from the reading of the award that punishment of dismissal was found to be harsh. The respondent-workman's date of birth is 17.11.1924 and he attained the age of superannuation in November 1994.

#. The learned counsel for the petitioner contended that it was a serious misconduct of respondent to get himself engaged elsewhere and the Labour Court though has not stated that it was not a misconduct, full backwages were ordered. Even if the punishment of dismissal was found to be harsh, then too there was no question of awarding reinstatement and more so with full backwages. It has next been contended that the award of full backwages is otherwise also illegal as the respondent has raised the dispute after about four years of his dismissal.

#. On the other hand, the learned counsel for the respondent contended that the Labour Court has passed the award after taking into consideration all the facts of the case and it cannot be said to be a perverse or arbitrary award. In the case of respondent-workman, the punishment was found to be harsh and as such the Labour Court, when the respondent-workman had attained the age of superannuation, awarded backwages.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. It is true that in case an employee of the Corporation engages himself elsewhere, it is a

misconduct. However, this misconduct has to be considered in the context of prevailing circumstances in the country. It is not the case of petitioner-Corporation that the respondent-workman was not discharging his full time duties with it or he was defaulting in discharging of duties in any manner whatsoever. If we go by reality of life, then a notice of fact can be taken that for an employe who has to maintain his own family and other liabilities, it is too difficult to meet out the expenses of necessity of life from the amount of salary which he gets. People in our country talk of corruption and invariable complaints are there against employees of the State Government or the Corporations that they are corrupt, i.e. they are taking illegal gratification. A larger question which arise in these facts and circumstances is whether any difference can be made in between an employee who takes employment elsewhere after the working hours in the Corporation and an employee of the Corporation who earns, sitting at one place of the Corporation, by way of illegal gratification. The main thrust is on the question of extra income and if we go by this, then no distinction can be made in between the employees of the Corporation who earn money by way of illegal gratification and a person like respondent-workman, who by putting his additional labour and working elsewhere, at the cost of his enjoyment, makes some extra earning, after the office hours of the Corporation. However, if we go by technicalities, the Corporation is correct, but if we go by realities and particularly taking into consideration the prevailing circumstances in the country, the respondent-workman could not have been put to such a harsh punishment of dismissal for this misconduct. It is a matter of common knowledge that corruption in the country is increasing day by day and it is prevailing at all levels but the culprits are not caught. The case of respondent-workman, who by putting his extra labour elsewhere after the working hours of the Corporation and discharging full duties there had earned money at the cost of his enjoyment and deprival of the company with his family members, could not have been taken so serious to the extent of his dismissal from services. The Labour Court has taken a positive and real approach in the matter and it has not committed any illegality where this punishment was held to be harsh. However, the Labour Court, after holding that the punishment to be harsh was required to go on the question of alternative punishment to be given to the respondent-workman, but looking to the fact that the petitioner was due to reach the age of superannuation within a few months, it found out a way by giving him backwages and other benefits. This approach

of the Labour Court seems to be not justified. By passing the award of full backwages from the date of dismissal till the date of reaching the age of superannuation, with all benefits, the Labour Court has given the respondent-workman, the benefits for which he would have been entitled only where the misconduct was not found proved. The misconduct was taken to have been committed by respondent-workman and as such, after holding that the punishment of dismissal from services was harsh, some alternative punishment would have been substituted for the same. I find sufficient justification in the contention of the learned counsel for the petitioner that there is no justification whatsoever to award backwages for the period of four years taken by workmen in raising the industrial dispute before the conciliation officer. In this regard, interest of justice will be met in case the award impugned is modified to the extent that the respondent-workman shall only be entitled for the backwages from 1st November 1982 till the date of attaining the age of superannuation. Subject to the aforesaid modification, rest of the award of the Labour Court is maintained.

#. In the result, this Special Civil Application succeeds in part as aforesaid. Rule disposed of accordingly. No order as to costs.

#. Before parting with the judgment, I consider it to be necessary to make a few observations regarding the procedure which is prevailing in this Court. The award impugned in this Special Civil Application has not been implemented so far as what the learned counsel for the parties contended that the exparte interim relief which has been granted by this Court is operating for all these years. After the order of exparte interim relief by this court, curiously enough, the matter was not put for further orders on interim relief after service on the respondent. The matter then in that case will not come on the Board till otherwise it reaches to its number for final hearing. In such case, the respondent is required to file an application, either M.C.A. or C.A. for vacation of interim relief. So for getting the interim relief vacated he has to incur expenses of filing of M.C.A. or C.A.. I am of the considered opinion that for act of the Court, a litigant should not be put to a loss. The Division Bench of this Court, in the case of Registrar, High Court of Gujarat v. B.J.Patel, Chief Judicial Magistrate & Jt. Civil Judge (S.D.), Vadodara, reported in 1997(2) GLR 1660, held as under:

The parameters for the grant of interlocutory

order, though are not prescribed in the Constitution, but are analogous to the provisions of Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908 (Code). The impugned order suggests only that the respondent-original petitioner has a fair case. Could mere existence of fair case is enough for attracting interlocutory order ? The spontaneous answer could be in negative. It is a settled proposition of law that interim order during the pendency of the main dispute can be granted provided the following ingredients are established to the hilt:

(1) Prima facie case;
(2) Balance of convenience; and
(3) Irreparable injury.

Mere existence of one of the factors is not sufficient. Even the impugned order does not remotely say that balance of convenience tilts in favour of the respondent or that refusal of the interlocutory order will result into irreparable harm and damage. All the three principles governing the grant of refusal of the interlocutory injunction or order must co-exist. It is not enough even strong prima facie case is shown. It must be, successfully, shown that there is strong prima facie case and irreparable harm will be caused to the petitioner if the interlocutory order is refused and balance of convenience tilts in favour of the petitioner. It is rightly submitted that the impugned order on its plain perusal does not say that there was any prima facie case or that balance of convenience tilted in favour of the respondent-original petitioner or that irreparable injury will be caused in case of refusal of the interim relief or order.

Before granting mandatory interlocutory injunction, the Court must also address itself to the following questions:

(1) Firstly, the Court must feel a high degree of assurance that even after the full fledged trial similar order in all probabilities be granted; and

(2) Secondly, that irretrievable harm and injury shall be caused if the thing

complained of is allowed to continue until final decision in the matter.

##. So, when the provisions of Civil Procedure Code, 1908, are not applicable, its provisions as contained in Order 39 thereof are also not applicable, but still its principles can be made applicable to the proceedings under Article 226/227 of the Constitution of India. If we go by the scheme of the Order 39, it contemplates that barring the exceptional circumstances, no exparte interim injunction should be granted. Interim injunction could have been granted only after hearing the other side. `Exception' is carved out only in exceptional cases and with further rider that the Court, in that case, has to record reasons for passing exparte interim injunction. In this Court, interim orders are passed exparte without assigning any reasons, as is evident from this case also. However, even if it is permissible, then it shall be the duty of this Court to place the matter immediately after service of notice to the respondent on the Board for passing a final order in the matter of interim relief. The respondents should not be burdened for filing the application for vacation of interim reliefs. Otherwise, this procedure shall be in violation of principles of natural justice. I could not lay hand on any Rule in the Gujarat High Court Rules which provides that matter in which ad-interim injunction is granted should not be put for passing further orders of the Court on that matter unless the other side approaches this Court by filing M.C.A. or C.A. In all such matters and otherwise also, it is in consonance with the principles of natural justice as well as underlying objects and principles of Order 39 of the Civil Procedure Code, that where interim relief has been granted, notice should be given to the other side making it returnable within a reasonable time so that one may have opportunity of contesting the order of interim relief, and after hearing the other side, the Court has to pass final order, either confirming or vacating the interim relief or any other order suitable to the facts of a particular case. Reverting back to the present case, the respondent-workman now is about 73 years' old. He has been litigating his matter of dismissal for about last 15 years. The award impugned has been made in the year 1994, but still he could not get a single rupee and this old man is suffering for all these years. In these facts and circumstances, I consider it to be appropriate to direct the respondent-Corporation to make payment of backwages in pursuance of the award of the Labour Court as modified by this Court in this order within a period of two months from today. However, liberty to the Corporation to

approach this Court for extension of this period where it has real and genuine difficulty to make payment of the amount payable to the respondent-workman within the aforesaid period.

.....

(sunil)